



August 13, 2018

Via <https://foiaonline.regulations.gov>

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Freedom of Information Act Request – Documents Related to Settlement of
United States v. Placer Mining Corp., Civil Case No. 2:04-cv-001126-EJL

Dear National Freedom of Information Officer:

On behalf of Idaho Conservation League, we hereby request access to the records described below pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the pertinent Environmental Protection Agency (“EPA” or “Agency”) regulations, 40 C.F.R. § 2.100 *et seq.*

Definitions applicable to this request:

“Bunker Hill CTP” shall refer to the water treatment facility known as the Bunker Hill Central Treatment Plant located at or about 110 Wildcat Way, Kellogg, Idaho, 83837.

“EPA” shall refer to the United States Environmental Protection Agency, and any individual acting as an agent on its behalf.

“Bunker Hill Mining Corporation” shall refer to the Bunker Hill Mining Corporation, previously named the Liberty Silver Corporation, and any individual acting as an agent on its behalf.

“Placer Mining Corporation” shall refer to the Placer Mining Corporation, and any individual acting as an agent on its behalf.

“Bunker Hill Mine” shall refer to the Bunker Hill lead, silver and zinc mine located in Kellogg, Idaho, in the Coeur d'Alene Basin, and all associated facilities and property.

“Communications” shall refer to electronic mail and all associated attachments, letters, faxes, calendar appointments, phone calls, text messages, or any other correspondence.

“Records” includes correspondence, minutes of meetings and a list of participants for those meetings, daily agendas and calendars, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or

otherwise produced, reproduced, or stored), and includes materials that the agency has either created or obtained.

To narrow the scope of the search, for the purposes of this request, “records” does not include emails in unindexed email accounts, but does include emails in secondary email accounts, emails entered into the agency’s correspondence tracking system, and communications sent through personal email or encrypted applications to conduct official business.

Description of Records Sought:

This FOIA request seeks:

- (1) All current and expired Clean Water Act permits for any activity at the Bunker Hill CTP issued at any time between 1975 through the date of completion of this records request.
- (2) All EPA facility registry identification numbers for the Bunker Hill CTP.
- (3) All testing data, monitoring data, reporting data, and/or reports pertaining to water quality and/or discharges from the Bunker Hill CTP from January 1, 2015 through the date of completion of this records request.
- (4) All records of communications between the EPA and Bunker Hill Mining Corporation pertaining to the Bunker Hill CTP.
- (5) All records pertaining to the volume of wastewater treated at the Bunker Hill CTP from January 1, 2015 through the date of completion of this records request.
- (6) All records pertaining to the quality of influent received by the Bunker Hill CTP from January 1, 2015 through the date of completion of this records request.
- (7) All records pertaining to upgrades to the Bunker Hill CTP, including but not limited to Clean Water Act permits, applications, and associated correspondence. Relevant search terms may include NPDES Permit No. IDR1000XF, and EPA Registry Identification No. 110070204001.
- (8) All correspondence between EPA and Eric Reitter, Amec Foster Wheeler Environment, Amec Foster Wheeler Environment & Infrastructure, Inc., Clint Smith, and GeoTek, Inc., about the Bunker Hill CTP between January 1, 2016 through the date of completion of this records request.
- (9) All records pertaining to the purchase of the Bunker Hill mine by the Bunker Hill Mining Corporation from the Placer Mining Corporation between January 1, 2016 through the date of completion of this record request

- (10) All records concerning settlement of the lawsuit *United States v. Placer Mining Corp.*, Civil Case No. 2:04-cv-001126-EJL, including but not limited to all correspondence, draft settlement agreements, final settlements, consent decrees, draft consent decrees, final consent decrees, draft administrative settlement, final administrative settlement, and all associated exhibits or appendices. The relevant period for this request is from January 1, 2016, through the time at which this record request is completed.

We request that you include the following search terms in searching for responsive records related to the Bunker Hill CTP: “Bunker Hill Central Treatment Plant,” “CTP” and “Central Treatment Plant.”

We request these documents in electronic form if possible, but hard copies would also be acceptable. If a response is posted on FOIAonline, we request prompt notification by email at jparekh@earthjustice.org and agoodin@earthjustice.org that responsive documents have been posted.

This request seeks responsive records in the possession, custody, or control of any EPA office, including, but not limited to, the Office of Resource Conservation and Recovery, and EPA Region 10.

In the event that any requested document is claimed, or continues to be claimed, exempt from disclosure or review, or otherwise withheld, we request an index or log of documents withheld, with the maximum possible identifying information that you can provide, including a description of the document withheld, its date, its location, its recipient(s) and the specific reason(s) the document is being withheld. 5 U.S.C. § 552(b). We further request that EPA make all information requested publicly available on its website. 5 U.S.C. § 552(a)(2)(D)(i)(II); *see also* Freedom of Information Act; Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4683 (Jan. 26, 2009) (“All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.”).

Request for a Fee Waiver

We respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l)(1).

FOIA mandates that agencies waive or reduce search and copying fees where the disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

In addition to the statutory direction, EPA has issued regulations outlining factors that it considers in deciding whether a fee waiver is warranted: (1) the request concerns the operations or activities of government; (2) the disclosure likely will contribute to understanding of government operations or activities; (3) the disclosure will contribute significantly to the public’s

understanding; and (4) the disclosure is not primarily in the requester's commercial interest. *See* 40 C.F.R. § 2.107(l)(1)-(3).

As one court explained, if a non-profit organization has "identified why they wanted the administrative record, what they intended to do with it, to whom they planned on distributing it, and the [relevant] expertise of their membership," then a waiver is appropriate. *Ctr. for Biological Diversity v. Office of Mgmt. & Budget*, 546 F. Supp. 2d 722, 727 (N.D. Cal. 2008) (internal quotation omitted). The information provided below demonstrates that the requesting groups meet the required criteria and are entitled to a full fee waiver.

Idaho Conservation League ("ICL") is a nonprofit organization dedicated to protecting Idaho's clean water, wilderness and quality of life, including protecting the environment from inappropriate mining-related activities. We ask for a full fee waiver because "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of these operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(iii). This request concerns a matter of over-riding public importance. The Bunker Hill Mining Corporation proposes to reopen the second largest lead and zinc mine in the United States on an existing Superfund site. Prior operation of the Bunker Hill mine and associated lead smelters caused debilitating illnesses to surrounding residents from lead poisoning, poisoned Lake Coeur d'Alene Lake with lead, and full remediation of the site will require expenditure of billions in taxpayer dollars. The public has a right to know the basis for settlement of the CERCLA lawsuit brought against the former owner of the Bunker Hill mine, Placer Mining Corporation. The public also has the right to know about water treatment at the Bunker Hill Central Treatment Plant, which treats lead contaminated water. Daylighting this information will contribute greatly to public understanding of the operations of EPA on this important public policy matter. ICL appropriately limited its request to information that is not already in the public domain.

Moreover, Idaho Conservation League has the expertise to analyze the requested records and the ability to disseminate the information and its analysis to the public. ICL regularly scrutinizes mining proposals in Idaho to determine whether they pose unacceptable risks to human health and the environment. ICL then disseminates this information to educate the public and allow increased participation in regulatory processes. ICL represents 35,000 supporters across the State of Idaho. For example, ICL has been actively involved in gathering information about the exploration, engaging in advocacy and public outreach programs, and participating in the Forest Service's administrative process surrounding the Golden Meadows Exploration Project, which is an exploratory mining project on the Stibnite site in headwaters of the East Fork of the South Fork of the Salmon River watershed. ICL staff have toured the Stibnite site on multiple occasions with staff from Midas Gold (the project proponent) and the Forest Service, and visited areas near the site for investigatory and outreach purposes on several other occasions. ICL has been in regular contact with the Forest Service concerning the Golden Meadows exploration project, including submitting FOIA requests pertaining to the exploration. ICL submitted comments to the Forest Service throughout the NEPA process for the project and filed an administrative appeal and litigation on the Forest Service's decision. Additionally, ICL has held media events and held informational meetings for ICL members and the public, and has undertaken various other activities all aimed at educating and organizing interested people about the Stibnite site and Golden

Meadows exploration project and its potential impacts to the environment. ICL published editorials in the Star News concerning the exploration.

ICL's involvement in the Stibnite site is just one example of ICL's work on this issue. ICL has also engaged in cooperative work with Formation Capital's Idaho Cobalt Project outside of Salmon, Idaho to improve mining operations and create a habitat restoration funding program. ICL is also working with the phosphate mining companies of southeastern Idaho, Monsanto, Agrium and Simplot, to develop the Upper Blackfoot Restoration Initiative for Conservation, a similar habitat restoration program. ICL has also been involved in community education efforts on the values of the Boise River and the threats posed by arsenic pollution from Atlanta Gold's mining projects in the Boise River watershed and Boise National Forest.

In short, Idaho Conservation League works actively with other nonprofit organizations, local communities, tribal governments, and other individuals and entities confronting the risks of mining nationwide, including in Idaho specifically. Idaho Conservation League, and the groups they collaborate with, disseminate information about hard rock mining and the associated impacts of hazardous waste releases into waters of the United States through newsletters, web sites, action alerts, press releases, social media, and collaboration with others. They will evaluate the records disclosed and share them. These groups have the expertise and experience to evaluate this information and disseminate it appropriately. *See Friends of the Coast Fork v. United States Dep't of the Interior*, 110 F.3d 53, 55 (9th Cir. 1997); *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) (noting cases holding "statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public sufficient to entitle an organization to a fee waiver"). Idaho Conservation League is eminently qualified and able to analyze the requested records and disseminate the information on this important issue to the public.

Finally, Idaho Conservation League is a nonprofit organization that has no commercial interest in the requested records. *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (noting that FOIA's fee waiver provision is to be "liberally construed in favor of waivers for noncommercial requestors" (quoting legislative history)). Their sole interest in obtaining the records is to analyze the information, incorporate it into educational materials and advocacy to EPA and other governmental entities, and disseminate the information along with their analysis to the public. Accordingly, ICL is entitled to a fee waiver. *See* 40 C.F.R. § 2.107(l)(1)-(3).

Please do not hesitate to call me to clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at (206) 343-7340 ext. 1044. As provided by FOIA, 5 U.S.C. § 552(a)(6)(A), we look forward to a reply within twenty working days. Thank you in advance for your assistance.

Sincerely,

Jaimini Parekh
Amanda Goodin
Attorneys for

National Freedom of Information Officer
U.S. Environmental Protection Agency

Idaho Conservation League